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HONORABLE WHITMAN L. HOLT

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In re

ICAP ENTERPRISES, INC., et al.,

Debtors.¹

No. 23-01243-WLH11
(Jointly Administrated)

**RENEWED AND AMENDED
EMERGENCY MOTION TO ESTABLISH
SCHEDULE ON DIP AND 9019 MOTION**

The Official Committee of Unsecured Creditors hereby files the attached
*Renewed and Amended Emergency Motion to Establish Schedule on DIP and 9019
Motion* as a courtesy to O'Melveny & Myers, LLP, counsel for iCap Enterprises, Inc.,
et al., Debtors.

DATED this 19th day of March, 2024.

BUSH KORNFELD LLP

By /s/ Armand J. Kornfeld

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¹ The Debtors (along with their case numbers) are iCap Enterprises, Inc. (Case No. 23-01243-11); iCap Pacific NW Management, LLC (Case No. 23-01261-11); iCap Vault Management, LLC (Case No. 23-01258-11); iCap Vault, LLC (Case No. 23-01256-11); iCap Vault 1, LLC (Case No. 23-01257-11); Vault Holding 1, LLC (Case No. 23-01256-11); iCap Investments, LLC (Case No. 23-01255-11); iCap Pacific Northwest Opportunity and Income Fund, LLC (Case No. 23-01253-11); iCap Equity, LLC (Case No. 23-01247-11); iCap Pacific Income 4 Fund, LLC (Case No. 23-01251-11); iCap Pacific Income 5 Fund, LLC (Case No. 23-01249-11); iCap Northwest Opportunity Fund, LLC (Case No. 23-01253-11); 725 Broadway, LLC (Case No. 23-01245-11); Senza Kenmore, LLC (Case No. 23-01254-11); iCap Campbell Way, LLC (Case No. 23-01250-11); UW 17th Ave, LLC (Case No. 23-01267-11); iCap Broadway, LLC (Case No. 23-01252-11); VH 1121 14th LLC (Case No. 23-01264-11); VH Senior Care LLC (Case No. 23-01266-11); VH Willows Townhomes LLC (Case No. 23-01262-11); iCap @ UW, LLC (Case No. 23-01244-11); VH 2nd Street Office, LLC (Case No. 23-01259-11); VH Pioneer Village LLC (Case No. 23-01263-11); iCap Funding LLC (Case No. 23-01246-11); iCap Management LLC (Case No. 23-01268-11); iCap Realty, LLC (Case No. 23-01260-11).

**RENEWED AND AMENDED EMERGENCY
MOTION TO ESTABLISH SCHEDULE ON DIP
AND 9019 MOTION– Page 1**

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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In re:

Chapter 11

ICAP ENTERPRISES, INC., *et al.*,

Lead Case No. 23-01243-WLH11
Jointly Administered

**EX PARTE EMERGENCY MOTION TO
SET SCHEDULE - 1-**

Debtors.¹

**RENEWED AND AMENDED
EMERGENCY MOTION TO
ESTABLISH SCHEDULE ON DIP
AND 9019 MOTION**

Pursuant to Rules 9006(c) and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), the above-captioned debtors and debtors in possession (the “Debtors”) in the above-captioned chapter 11 bankruptcy cases (the “Chapter 11 Cases”), hereby move (this “Motion”) for the entry of an order setting a schedule on the following motions:

- *Joint Motion of the Debtors and Committee for Order: (I) Authorizing the Debtors to Obtain Supplemental Postpetition Secured Financing; (II) Granting Superpriority Administrative Expense Claims; and (III) Granting Related Relief* [ECF 467] filed February 23, 2024 (“DIP Motion” or “DIP Mot.”), and
- *Debtors’ Motion to Approve Entry Into and Performance Under the Cooperation Agreement* [ECF No. 470] filed on February 23, 2024 (the “9019 Motion” or “9019 Mot.”).

Debtors request that the court enter a scheduling order (substantially in the form of **Exhibit 1**, attached hereto), setting pre-hearing deadlines.

¹ The Debtors (along with their case numbers) are iCap Enterprises, Inc. (23-01243-11); iCap Pacific NW Management, LLC (23-01261-11); iCap Vault Management, LLC (23-01258-11); iCap Vault, LLC (23-01256-11); iCap Vault 1, LLC (23-01257-11); Vault Holding1, LLC (23-01256-11); iCap Investments, LLC (23-01255-11); iCap Pacific Northwest Opportunity and Income Fund, LLC (23-01253-11); iCap Equity, LLC (23-01247-11); iCap Pacific Income 4 Fund, LLC (23-01251-11); iCap Pacific Income 5 Fund, LLC (23-01249-11); iCap Northwest Opportunity Fund, LLC (23-01253-11); 725 Broadway, LLC (23-01245-11); Senza Kenmore, LLC (23-01254-11); iCap Campbell Way, LLC (23-01250-11); UW 17th Ave, LLC (23-01267-11); iCap Broadway, LLC (23-01252-11); VH 1121 14th LLC (23-01264-11); VH Senior Care LLC (23-01266-11); VH Willows Townhomes LLC (23-01262-11); iCap @ UW, LLC (23-01244-11); VH 2nd Street Office, LLC (23-01259-11); VH Pioneer Village LLC (23-01263-11); iCap Funding LLC (23-01246-11); iCap Management LLC (23-01268-11); iCap Realty, LLC (23-01260-11); Vault Holding, LLC (23-01270-11); iCap Pacific Development LLC (23-01271-11); iCap Holding LLC (23-01272-11); iCap Holding 5 LLC (23-01273-11); and iCap Holding 6 LLC (23-01274-11); Colpitts Sunset, LLC (23-01432-11); CS2 Real Estate Development LLC (23-01434-11); and iCap International Investments, LLC (23-01464-11).

1 In support of this Motion, the Debtors respectfully state the following:

2 **I. JURISDICTION AND VENUE**

3 1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334.
4 This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

5 2. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

6 3. The basis for relief requested herein is Rules 9006(c), and 9014 of the
7 Bankruptcy Rules.

8 **II. STATEMENT OF FACTS**

9 4. On September 29 and 30, 2023 (“Petition Date”), the Debtors filed
10 voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. Additional
11 information regarding the Debtors and their bankruptcy case, including the Debtors’
12 businesses, financial condition, corporate structure, and the reasons and objectives for
13 the case are set forth in the Declaration of Lance Miller in Support of First Day Motions
14 [ECF No. 23].

15 5. The Debtors filed the DIP Motion and 9019 Motion on February 23, 2024,
16 on regular notice, with a hearing set for March 27, 2024. ECF No. 471. As explained in
17 the DIP Motion, the DIP Loan Facility is expressly conditioned on the court finding that
18 the Debtors operated as a Ponzi scheme during the prepetition period. DIP Mot., at 7.
19 Accordingly, the Debtors have requested that this court find that Debtors operated as a
20 Ponzi scheme. *Id.* at 32-33.

1 6. In support of the DIP Motion, Debtors have filed the *Declaration of Lance*
2 *Miller in Support of the Supplemental Debtor in Possession Financing Motion* [ECF
3 No. 467-1], *Supplemental Declaration of Lance Miller in Support of Postpetition*
4 *Financing and Related Relief* [ECF No. 468, Supplemented at ECF No. 473],
5 *Declaration of Jeffrey H. Kinrich in Support of Postpetition Financing and Related*
6 *Relief*[ECF No. 469], *Declaration Of Stanley Ho In Support Of Post-Petition Financing*
7 *And Related Relief* [ECF No. 541], and *Supplemental Brief Regarding Ponzi Scheme*
8 *Findings In Support Of Joint Motion For Order Authorizing Debtor-In-Possession*
9 *Financing* [ECF No. 542].

10 7. On March 3, 2024, the Debtors filed an Ex Parte *Emergency Motion to*
11 *Schedule and Expedite Hearing on Termination Motion on Shortened Notice; and*
12 *Establish Schedule on DIP and 9019 Motion* [ECF No. 553] (“Motion to Establish a
13 Schedule”).

14 8. On March 11, 2024, the United States Trustee filed an Objection to the
15 DIP Motion [ECF No. 583], and on March 18, 2024, several other parties (collectively,
16 “Objectors”) filed Objections to the DIP Motion, 9019 Motion, and/or Motion to
17 Establish a Schedule. *See* ECF Nos. 619-621, 624-625, 628.

18 **III. ARGUMENT**

19 Having reviewed the positions of the Objectors, Debtors propose an amended
20 schedule that will allow for expedited discovery while balancing the urgency of
21 Debtors’ liquidity situation and the need to advance these bankruptcy proceedings
22 expeditiously. Debtors request the court convert the evidentiary hearing set for March
23 27, 2024, to a status conference and set the following deadlines in advance of an April
24 9, 2024 evidentiary hearing:

- 25 1. Fact discovery, if any, must be completed by March 29, 2024.
- 26 2. Expert discovery, if any, must be completed by April 3, 2024.

**EX PARTE EMERGENCY MOTION TO
SET SCHEDULE - 4-**

3. A list of witnesses to be called at the hearing and an estimate of the duration of their testimony must be filed by April 3, 2024.
4. A list of exhibits to be used at the hearing must be filed by April 3, 2024.
5. Objections to any other parties' witness and/or exhibit lists must be filed by April 5, 2024.

As the court has noted, "expedition is always an important consideration in bankruptcy." *Bullard v. Blue Hills Bank*, 575 U.S. 496, 505 (2015); *see also In re Easterday Ranches, Inc.*, 647 B.R. 236, 248 n.29 (Bankr. E.D. Wash. 2022) (Holt, J.) (collecting cases, including in Chapter 11 context).

Good cause exists to set an expedited schedule, because as explained in the DIP Motion the Debtors have limited cash resources to fund litigation efforts and pursue recoveries from third parties to maximize the ultimate distribution to investor creditors. DIP Mot., at 16. The DIP Loan Facility will provide the working capital necessary for the Debtors' to pursue claims arising out of the Ponzi scheme and formulate a plan of liquidation. *Id.* at 5, 7, 16.

Although Debtors will file a reply addressing Objectors' substantive arguments, Debtors note that no Objector has shown good cause to delay the entry of a scheduling order for the DIP Motion. First, certain Objectors complain that Debtors have not identified who are the targets of future litigation stemming from the Ponzi findings and therefore cannot determine whether to participate in discovery. *See, e.g.*, ECF No. 617, at 6 n.3. Those Objectors presumably already know they are targets, which is why they have objected, but to avoid any confusion, Debtors can confirm that all Objectors are potential targets for future litigation and should be ready to participate in this matter on an expedited schedule.²

² Debtors reserve the right to pursue additional targets who are not currently Objectors.

1 Second, only two Objectors offered an alternative schedule but neither provided
2 justification for why their proposed schedule is necessary and reasonably tailored to
3 the needs of this case. Chris Christensen argues that any litigation regarding Ponzi
4 issues should be stayed due to criminal investigations and, if not stayed, he claims
5 (without explanation) “discovery will take at least 6-12 months.” ECF No. 620, at 2-3.
6 But the existence of criminal investigations that may or may not result in prosecutions
7 at some unspecified time in the future is not a reason to stay this court’s authority over
8 these proceedings—especially given the critical role the requested Ponzi findings will
9 play in how these chapter 11 proceedings move forward. Although Christensen
10 suggests unspecified “parties” may want to depose various unspecified witnesses and
11 other unspecified “parties” may hire their own experts [ECF No. 620, at 11-19], he
12 offers no concrete reason why a schedule cannot be set now and later modified if
13 necessary. Nor has he made any effort to seek discovery in the weeks since Debtors
14 filed their DIP Motion and supporting evidence. Indeed, despite voluminous court
15 filings that provide a basis for parties to initiate discovery into the evidence that
16 Debtors plan to rely on at the DIP hearing, no Objector has noticed depositions and
17 only one, Redmond Funding Group, LLC (“Redmond”), has made any effort to
18 request documents.

19 Redmond’s proposal to continue these proceedings for 90 days also lacks
20 justification. ECF No. 624. Redmond states that its counsel contacted Debtors counsel
21 on March 12 and March 14 regarding a discrete set of documents. ECF No. 624, at 4;
22 624-1, at 2.³ Debtors are working on responding to Redmond’s requests and, to the
23 extent Debtors identify responsive documents, anticipate producing them shortly.
24 Redmond’s request demonstrates that all Objectors already have the ability to seek

25 _____
26 ³ Redmond’s inquiries on March 12 and March 14 were sent to an outdated email address for Debtors’ counsel, Julian Gurule, who recently changed law firms.

1 discovery and should act diligently if they wish to participate in the DIP hearing.
2 Debtors are prepared to work cooperatively and expeditiously with all parties on
3 targeted discovery, without the need for protracted litigation. To that end, Debtors will
4 make a data room available this week that will contain materials Debtors are relying
5 on for the DIP hearing.

6 Third, although the Objectors dispute the process by which Debtors have sought
7 the Ponzi findings requested in the DIP Motion, Debtors maintain that adequate notice
8 has been provided (as evidenced by the Objectors' participation) and a contested
9 matter is the appropriate procedure to resolve the Ponzi issue. But what is most
10 significant for purposes of the court setting a schedule is what is *missing* from the
11 Objectors' filings: no Objector has offered a specific factual reason why this court
12 cannot set discovery and other pre-hearing deadlines. If scheduling modifications are
13 later necessary and justified by concrete (rather than hypothetical) needs, then the
14 parties can meet and confer and, if not resolved, seek appropriate leave of court.

15 **IV. CONCLUSION**

16 WHEREFORE, the Debtors respectfully request that the court grant the relief
17 requested in this Motion and such other and further relief as the court may deem just
18 and proper.

1 DATED this 19th day of March, 2024:

2
3 /s/ Armand J. Kornfeld

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EXHIBIT 1

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8 UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

9 In re:

10 ICAP ENTERPRISES, INC., *et al.*,
11 Debtors.¹

Chapter 11

Lead Case No. 23-01243-WLH11
Jointly Administered

12 **[PROPOSED] ORDER**
13 **GRANTING RENEWED AND**
14 **AMENDED EMERGENCY**
15 **MOTION TO ESTABLISH**
16 **SCHEDULE ON DIP AND 9019**
17 **MOTION**

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21 ¹ The Debtors (along with their case numbers) are iCap Enterprises, Inc. (23-01243-11); iCap Pacific NW Management, LLC (23-01261-11); iCap Vault Management, LLC (23-01258-11); iCap Vault, LLC (23-01256-11); iCap Vault 1, LLC (23-01257-11); Vault Holding1, LLC (23-01256-11); iCap Investments, LLC (23-01255-11); iCap Pacific Northwest Opportunity and Income Fund, LLC (23-01253-11); iCap Equity, LLC (23-01247-11); iCap Pacific Income 4 Fund, LLC (23-01251-11); iCap Pacific Income 5 Fund, LLC (23-01249-11); iCap Northwest Opportunity Fund, LLC (23-01253-11); 725 Broadway, LLC (23-01245-11); Senza Kenmore, LLC (23-01254-11); iCap Campbell Way, LLC (23-01250-11); UW 17th Ave, LLC (23-01267-11); iCap Broadway, LLC (23-01252-11); VH 1121 14th LLC (23-01264-11); VH Senior Care LLC (23-01266-11); VH Willows Townhomes LLC (23-01262-11); iCap @ UW, LLC (23-01244-11); VH 2nd Street Office, LLC (23-01259-11); VH Pioneer Village LLC (23-01263-11); iCap Funding LLC (23-01246-11); iCap Management LLC (23-01268-11); iCap Realty, LLC (23-01260-11) ; Vault Holding, LLC (23-01270-11); iCap Pacific Development LLC (23-01271-11); iCap Holding LLC (23-01272-11); iCap Holding 5 LLC (23-01273-11); and iCap Holding 6 LLC (23-01274-11).

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**ORDER SETTING EXPEDITED HEARING ON SHORTENED
NOTICE AND ESTABLISHING SCHEDULE- 1**

1 Upon the motion [ECF No. __] (the “Motion”)² of the above-captioned debtors
2 and debtors in possession (the “Debtors”) pursuant to Rule 9006(c) and 9014 of the
3 Bankruptcy Rules, for an order setting pre-hearing deadlines on the DIP Motion, all as
4 more fully set forth in the Motion; it further appearing that the court has jurisdiction
5 over this matter; and it further appearing that the relief requested in the Motion is in
6 the best interests of the Debtors, and their creditors; and good cause appearing
7 therefor,

8 **IT IS HEREBY ORDERED THAT:**

9 1. The Motion [ECF No. __] is granted;

10 **DIP Motion and 9019 Motion [ECF Nos. 467, 470]**

- 11 1. Fact discovery, if any, must be completed by March 29, 2024.
12 2. Expert discovery, if any, must be completed by April 3, 2024.
13 3. A list of witnesses to be called at the hearing and an estimate of the
14 duration of their testimony must be filed by April 3, 2024.
15 4. A list of exhibits to be used at the hearing must be filed by April 3, 2024.
16 2. Objections to any other parties’ witness and/or exhibit lists must be filed
17 by April 5, 2024.
18 3. An evidentiary hearing will be held on April 9, 2024.

19 The court retains jurisdiction and power with respect to all matters arising from
20 or related to the implementation and interpretation of this order.

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22 **///End of Order///**
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² Capitalized terms used, but not defined herein shall have the meanings ascribed to them in the Motion.

1 PRESENTED BY:

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